UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	
Plaintiff,	Civil Action
v.	No. 99-CV-02496 (GK)
PHILIP MORRIS USA INC., f/k/a PHILIP MORRIS INC., et al.	Next scheduled appearance: Trial (ongoing)
Defendants.	

DRAFT
UNITED STATES' WRITTEN DIRECT EXAMINATION OF FREDERICK T. GULSON
SUBMITTED PURSUANT TO ORDER #471A

BASIC BACKGROUND

Q. Good morning, Mr. Gulson. Please state your full name for the record.
A. Frederick Theodore Gulson.
Q. Are you represented by counsel?
A. Yes. Mr. Peter Gordon.
Q. Mr. Gulson, could you please state your current residence for the Court?
A. [DELETED]
Q. Are you an Australian citizen?
A. Yes.
Q. What is your current occupation?
A. I am the director of an agribusiness concern.
Q. Have you ever been employed by W.D. & H.O. Wills?
A. Yes.
Q. Mr. Gulson, I'd like to go over some background matters. Did you attend university?
A. Yes.
Q. What degrees do you hold?
A. I received a Bachelor of Arts from the University of New South Wales in 1970, a

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Bachelor
of Laws from Sydney University in 1975, and a Master of Laws from Sydney University
in
1987.
Q. In what jurisdictions have you qualified to practice as a solicitor?
A. I have qualified to practice in New South Wales, as well as in England and in
Northern
Ireland.
Q. Are you still qualified in those jurisdictions?
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A. I remain qualified to practice in all those jurisdictions, save for continuing legal
education
requirements, however, I no longer practice law.
Q. What professional positions did you hold prior to joining W.D. & H.O. Wills?
A. Before joining Wills, I held the positions of legal counsel at AFC Ltd.; legal
counsel
and
company secretary of Associates Financial Services Ltd., which is a Gulf & Western
subsidiary; and legal counsel with Mercantile Credits Ltd.
Q. What professional positions have you held since departing from Wills?
A. Since departing Wills, I have been director and legal counsel with the BGR group of
companies, however I ceased practising as a legal counsel approximately three years
ago.
Q. What was your position with W.D. & H.O. Wills?
A. I held two positions at Wills. I was company secretary of the listed company, I
believe
its
full name was W.D. & H.O. Wills Holding Limited, and I was in-house solicitor to the
operating company, W.D. & H.O. Wills Australia Limited.
Q. Would you understand if I referred to the corporate entities that employed you
as
"Wills" for the sake of brevity?
A. That is fine.
Q. At the time that you worked at Wills, did Wills have any corporate relationship
to a
company called BATCo?
A. Yes.
Q. What was the relationship between Wills and BATCo?

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A. My recollection is that BATCo had owned a stake in Amatil, which had been the parent
company of Wills until some time prior to my arrival. Prior to my employment at Wills, there was a transaction through which BATCo became the primary shareholder and parent
company of Wills.
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Q. Did Wills have a corporate relationship to BAT Industries?
A. Yes. BAT Industries was the ultimate parent of both BATCo and Wills.
Q. Do you recall whether Wills had a corporate relationship to Brown & Williamson?
A. Yes. Wills and Brown & Williamson were sister companies. Both were part of the BAT
Group.
Q. What do you mean by BAT Group?
A. BAT tobacco operating companies around the world that were ultimately owned or controlled by BAT Industries.
Q. Do you know whether Wills still exists as a corporate entity today?
A. I know that a successor to Wills exists in a company that I think is called BATAS, but
I
don’t know whether it is the identical corporate entity.
Q. When did you begin working at Wills?
A. I think it was October of 1989.
Q. How did you come to work at Wills?
A. I responded to an advertisement. I contacted the firm which was supervising the recruitment of an in-house solicitor and company secretary for Wills. Although the position was with Wills, the hiring process was run through BATCo. One of my first interviews was with Peter Godby, an in-house solicitor for either BATCo or BAT Industries. I believe that Mr. Godby was already in Australia addressing various issues following BATCo's takeover of Wills from Amatil. After I received approval from Godby
and BATCo, I went through a round of interviews with individuals from Wills, I think Gordon Watson, Chairman of Wills, and Phil Smith, Managing Director of Wills. After a negotiation on salary, I was hired.
Q. You were approved by BATCo before your hiring process began with Wills?
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A. Yes, I believe so.
Q. What were your responsibilities as Wills' in-house solicitor and company secretary?
A. As company secretary I handled a variety of administrative business matters. I handled filings with the Australian Stock Exchange and securities commission, prepared agendas for board meetings, participated in senior management meetings, and managed the company's secretarial department. There may have been other responsibilities as well. As in-house solicitor my primary responsibility was preparing Wills for an expected wave of smoking and health litigation. Other responsibilities included developing close relationships with my industry counterparts - counsel from other tobacco companies, attending industry related meetings at the Tobacco Institute of Australia, liaising with and instructing Clayton Utz - who were Wills' Australian external counsel, reviewing and negotiating contracts, and advising on legal matters and the management of Will's legal affairs in Australia. There may have been other responsibilities.
Q. What were your responsibilities in preparing for an expected wave of smoking and health litigation?
A. My responsibilities were to work closely with BATCo in coordinating our preparation for litigation, to work with outside counsel to prepare for litigation, to review Wills' general preparedness for litigation, to review Wills' documents for litigation, and to oversee the implementation the Document Retention Policy.
Q. About how much of your time was spent addressing smoking and health issues?
A. About half my time, overall, but in stretches it would take up almost all of my time.
Smoking and health was the primary issue I addressed. There had not been sufficient preparation for litigation by Wills under Amatil, and now that BATCo controlled Wills it

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was very keen on ensuring that Wills was brought in line with the rest of the BAT Group companies. The Document Retention Policy was part and parcel of preparation for litigation, and was considered a very significant part of the preparation.

Q. How much of this time was spent addressing issues relating to the Document Retention Policy?

A. I'm not sure, but for some periods it was significant.

Q. What role did Wills' parent company BATCo have in your responsibilities at Wills?

A. It was made clear to me during the interview process, both from the prominence of BATCo in my hiring and in what I was told, that BATCo would play a significant role in my operations at Wills. BATCo and, through BATCo, BAT Industries, directed and oversaw many of my responsibilities as Wills' counsel in the area of smoking and health.

Despite the existence of separate corporate entities, matters relating to smoking and health
issues were integrated. One didn't think of BAT Group companies as separate companies as had been the case in my previous employment. Since research was shared through the BAT Group, each individual company's ability to handle smoking and health litigation was only as strong as its weakest link. If a position or document made one company vulnerable, it made the other companies vulnerable as well. There was a particular concern regarding Brown & Williamson, not only because it was the largest operating company, but because it was, by the time I arrived at Wills, already the object of numerous
lawsuits. As a result, there was a strong "top down" management style with BATCo dictating policy in relation to smoking and health for the entire BAT Group. All significant decisions and some less significant ones on smoking and health matters were either made by, or needed to be cleared through, BATCo. The focus was on protecting the
Group.

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Q. Did this differ from the role of parent companies in your previous employment?
A. Yes. There was much more upstream involvement from the parent company than in any prior position I had held.
Q. Why was the ability of each BAT company to handle smoking and health issues only as strong as the “weakest link”?
A. The central research facility for the various BAT Group operating companies around the world was located at Southhampton in England. Research from Southhampton would be distributed to the other BAT Group companies around the world, including Wills. In addition, other BAT operating companies had their own research departments and facilities of varying sizes. The facility at Wills was not particularly big, but there were more significant research facilities at some of the larger operating companies, including Brown & Williamson in the United States, and BAT Germany's operating company in Hamburg. The companies all shared research. If incriminating smoking and health research documents were discovered by the public or a plaintiff in Australia, not only would the document have been shared with the rest of the BAT Group companies, it probably came from one of the other BAT Group companies. As a result, a failure by Wills to safeguard sensitive documents in Australia, would threaten BAT operating companies across the globe. It was for this reason that the Document Retention Policy received such attention.
Q. To whom did you directly report?
A. I reported to different individuals on different matters. On company secretary and Australia-specific legal matters, I would report to Gordon Watson - who was Managing Director of the listed entity and Chairman of the manufacturing company and a director of the listed company board. On smoking and health related matters, I would report to

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Nicholas Cannar, who was senior counsel at BATCo.
Q. Can you be more specific about which matters you reported to Mr. Cannar about?
A. Yes. Whilst I was employed directly by Wills, I was the sole attorney at Wills, and I would report directly to BATCo on issues relating to litigation or potential litigation. For example, while I was at Wills there was a case called AFCO against the Tobacco Institute of Australia, an industry organization that included Wills and the other major Australian tobacco companies. In AFCO, the Tobacco Institute of Australia was being sued to enjoin it from making any statements that there was no evidence that passive smoke caused disease. I would report to, and take instruction from, Mr. Cannar on the case, which caused great concern for our overseas affiliates because of its potential precedent as a "crack in the dike" on passive smoking. I would report to Mr. Cannar regarding any threats of litigation that Wills had learned of or received. There were two cases against Wills during my time there, Gallagher and Cauldwell that I would report to Nick about. I reported to Nick about dealings with Clayton Utz. I reported to Nick about the Document Retention Policy and its implementation. Anything that could possible affect Wills, BATCo, or the BAT Group in the area of smoking and health I would report to Nick about.
Q. How often did you communicate with Nick Cannar?
A. I communicated with Nick on a near daily basis, by phone or by fax. If a matter was particularly sensitive we would talk on the phone instead of correspond.
Q. Did the time difference between England and Australia limit these conversations?
A. There were occasions when I would be woken up at home by a phone call from Nick, but generally when we would talk it would be the evening in Sydney and the morning in London. Sometimes I would get up very early so that I could reach Nick in the evening in

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London.
Q. What were the subject matters of these daily conversations?
A. The primary subject was smoking and health related matters. Of course, there would also
be general discussion - pleasantries and gossip - but primarily smoking and health issues.
Q. Did you have a background in litigation before going to work at Wills?
A. I had some experience managing litigation prior to joining Wills, but primarily my practice
had been in commercial law, not litigation.
Q. Aside from smoking and health related litigation matters, did BATCo or Nick Cannar direct any of your other activities at Wills?
A. Not really. I would consult with Cannar on other legal matters, but there wasn’t much
interference.
Q. Did anyone at Wills report to you?
A. Yes. Mike Harrison, assistant company secretary of the listed company, and company secretary for a number of the subsidiaries, reported me, as did other administrative staff. I
was the sole solicitor in Wills legal department, so no lawyers reported to me.
Q. You've stated that one of your primary responsibilities was preparing for an expected wave of smoking and health litigation. Who told you that one of your responsibilities was preparing for an expected wave of litigation?
A. Peter Godby told me during the interview process, as did Gordon Watson. Immediately
after I started at Wills, Nick Cannar explained that not only was litigation expected against
Wills in the form of tort claims, but that parties overseas were likely to attempt to discover
Wills' documents as part of lawsuits against other BAT Group companies or through the letter of request process, and that it would be my responsibility to prepare the company. It
ended up being a more significant aspect of my job than I thought it would be when I took

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the position.
Q. Was there any smoking and health litigation against Wills when you started?
A. No. There was the AFCO case against the TIA that I previously mentioned, but nothing
against Wills.
Q. Was there any expectation that smoking and health litigation would be filed against
Wills during your tenure?
A. Yes.
Q. Why?
A. There had already been numerous lawsuits filed against cigarette companies, including
our
sister company, Brown & Williamson, in the United States. There had been at least one
previous suit against Wills. It was only logical that there would be more suits filed against
Wills. Plus, there was concern that Wills would be drawn into overseas litigation against
a
parent or affiliate, either directly through a letter of request, or indirectly through a
discovery request.
Q. Did Wills have a Document Retention Policy when you arrived?
A. Yes.
Q. What was the Document Retention Policy?
A. It was the official title for what was more commonly known as the "Document Destruction
Policy". The Policy was a program to ensure that all sensitive documents, all documents
that if made public or discovered in litigation could potentially damage Wills, or Wills'
affiliate companies in the BAT group, were sanitised.
Q. What do you mean by sanitised?
A. Destroyed or otherwise made undiscoverable.
Q. What was the purpose of the Document Retention Policy?
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A. The purpose of the Document Retention Policy was twofold, to protect the litigation
position of Wills, and to protect the litigation positions of other BAT Group companies,

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especially our U.S. affiliate Brown & Williamson, by ensuring that potentially damaging documents would not be discovered from Australia.
Q. Why was the second purpose to protect the legal position of other BAT Group companies, including Brown & Williamson?
A. As touched on before, the BAT Group's legal defense in the area of smoking and health
was only as strong as its weakest link. The emphasis was always on protecting the BAT Group as a whole. Because of the widespread sharing of smoking and health research, a damaging document that was discovered from one company was, essentially, discovered from all. The problem was a very real one because Wills had copies of many BATCo and Brown & Williamson documents, and access to others through the use of the intercompany
computer linking the Wills research library with Southhampton. Since the litigation environment in the United States was considered very hostile, there was a particular concern that the discovery of sensitive documents would hurt Brown & Williamson.
Q. Did Wills have research documents from other BAT operating companies?
A. Yes.
Q. Did Wills have smoking and health research documents from Southhampton?
A. Yes, of course.
Q. Was Southhamption BATCo's research facility?
A. It may have been administered by BATCo, however it was jointly funded by the BAT Group operating companies, on behalf of the Group, and shared throughout the Group.
Q. Did Wills have smoking and health research documents from Brown & Williamson?
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A. Yes, I believe so.
Q. Do you know whether these other companies had smoking and health research documents from Wills?
A. I know that Wills shared its smoking and health research documents with other BAT Group companies. However, at the time I was at Wills it did not have a very significant research facility and I don't think it was creating a very significant volume of new smoking
and health research documents.
Q. Were most of the research documents held by Wills created within Australia?
A. No they were not. Most were from the larger BAT research centers at Southhampton, Brown & Williamson, and Hamburg.
Q. Can you recall the subject matters addressed by the smoking and health research

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that was sent to Wills from other BAT companies?
A. The lot.
Q. What do you mean by that?
A. We were receiving all sorts of science documents from Southhampton and elsewhere, it
wasn't as though there were only certain kinds of research that we were receiving.
Q. Do you recall any of the subject matters covered by these documents?
A. The relationship between smoking and disease, how to manipulate nicotine, addiction, the
effects of second hand smoke, animal studies. I'm sure there were many other subjects as
well.
Q. How do you know what research Wills had received from Southhampton or
elsewhere in the BAT Group?
A. Some from personal observation, from seeing the documents. Some from my discussions
with the people at the Scientific Research Group.
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Q. What was the Scientific Research Group?
A. The Scientific Research Group, commonly called the "SRG", was the tobacco science
department of Wills. It was located in a different location than the main offices of Wills
in
Sydney, it was in Pagewood, a suburb of Sydney. Most of Wills' scientific documents
were housed at Pagewood.
Q. Who were the heads of the Scientific Research Group?
A. Graham McGregor and Tas Wilson.
Q. What were their titles at within Scientific Research Group?
A. I don't recall. I know that they were the top two scientists at the Scientific Research
Group.
Q. Who implemented the Document Retention Policy?
A. The Legal Department had responsibility for implementing the Document Retention
Policy. As the only counsel in the Legal Department it was my responsibility.
Q. Was this unusual?
A. Yes, very. In every other organization that I had been a part of document retention issues
had been the responsibility of the audit or accounting departments, if there was any

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discrete document retention policy at all. While I found it unusual, it was consistent with
the purpose of Wills' Document Retention Policy, since it was actually a document
destruction policy. While it was important that the Document Retention Policy appear to
be a rote housekeeping measure, of the kind that would normally be run by an audit or
accounting department, the purpose of the Document Retention Policy was to protect
Wills and the BAT Group from litigation by ensuring that potentially damaging documents
were destroyed. In that respect, it made sense that the Legal Department would need to be
in charge of Document Retention.
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Q. Do you know the origin of the Document Retention Policy?
A. I was told by Nicholas Cannar, and it was confirmed by others, including Andrew Foyle,
that the Document Retention Policy for smoking and health documents that existed when I
arrived at Wills was created sometime in the early to mid 1980s as a result of a meeting
of
BAT Industries' Board in London. I was told that at that time, due to growing concerns
about litigation and the discovery of potentially damaging documents, a "Document
Retention Policy" was created by BAT Industries. BAT Industries distributed the Policy to
its subsidiaries, including Wills, for consistent implementation. Clayton Utz then
reviewed the BAT policy and made minor alterations to adapt it to Australia for Wills.
Q. Are you familiar with a decision by Justice Eames of the Supreme Court of Victoria
in McCabe v. British American Tobacco Australia Services Limited?
A. Yes.
Q. Have you read the McCabe decision?
A. Yes.
Q. What is your understanding of the McCabe decision?
A. The Court ruled in favor of the Plaintiff, Rolah McCabe, a smoker, in her claim against
BATAS, on the grounds that BATAS, destroyed documents potentially useful to the
Plaintiff's case with the intent to keep the documents out of litigation.
Q. Based upon your knowledge of the events described in McCabe, what is your

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opinion
of the factual conclusions reached by Justice Eames?
A. I was not at Wills for the entire period of time discussed in the McCabe decision, but
the
facts relating to my tenure at Wills are set forth accurately. My reaction upon reading the
decision was, "this guy has got it - he understands what we were doing."
Q. Are you aware that the decision was overturned by the Court of Appeals of Victoria
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in the Cowell case?
A. Yes. It is my belief that the reversal of McCabe, aided and abetted by the conduct of
the
lawyers in Cowell, was a miscarriage of justice. It was the decision in Cowell that
initiated the series of events that led to my appearing here today.
Q. I will ask you about that a little later. Now, I am going to hand you a copy of U.S.
Exhibit 77,832. Is this the document that you just described at the McCabe decision?
A. Yes.
Q. Please turn to page 9 of the decision. In paragraph 23, the decision quotes from a
document called the “Foyle Memorandum”. Are you familiar with a document known as the Foyle Memorandum?
A. Yes.
Q. Have you seen that document before?
A. Yes.
Q. In paragraph 23, the decision quotes the Foyle Memorandum as stating:
Wills' current document retention policy was introduced on the 30th December 1985 at a time when the tobacco companies in Australia anticipated the possibility of product liability litigation, although no case had actually been brought against any company. Clayton Utz had previously been instructed to take steps to prepare the Industry, and Wills in particular, for litigation. One of their first actions was to review the document retention policy of the Company, hence the new policy.
Does this statement accord with your understanding of the genesis of the Wills Document Retention Policy?

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A. Yes.
Q. We will return to the McCabe decision later, but you may put it aside for the time being.
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Do you know whether the Wills Document Retention Policy was similar to the Document Retention Policies at other BAT Group companies?
A. That was the whole point. The document retention policies of the various BAT operating companies needed to be as similar as possible, to ensure that sensitive documents would not be discovered from one company and come back to haunt the others. All of the BAT Group document retention policies derived from the BAT Industries policy, but I did not see all of the individual company's policies so I do not know what specific differences existed. As I mentioned, Clayton Utz made some modifications to the BAT Industries policy for Wills. I know that these changes were minor, since I was told by both Cannar and Foyle that the Wills Policy was very similar to BATCo’s. I do not know whether other companies had exact copies of the BAT Industries Document Retention Policy, or whether, like Wills, minor country specific changes were made.
Q. You mentioned that one of your responsibilities at Wills was to attend meetings of the Tobacco Institute of Australia. What was the relationship between Wills and the Tobacco Institute of Australia?
A. The Tobacco Institute of Australia was a vehicle for bringing together the interests of the different tobacco companies in Australia, for lobbying and public relations purposes, but also to share information between each other. Wills, as one of the members, used the TIA for those purposes.
Q. You've mentioned that some of Wills' actions were motivated by concerns for BATCo and Brown & Williamson. Was this true for the TIA?
A. Of course. The TIA was merely an extension of the Australian tobacco companies. The same concerns that motivated the companies motivated the TIA.
Q. Did the TIA have a document retention policy?
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A. Yes.
Q. Was it similar to the Wills policy?
A. Yes. The policies needed to be similar because the same risks applied. If a document were discovered from the TIA, if it were a BATCo document that had been shared by Wills, that document could be used against BATCo and Brown & Williamson. Clayton Utz worked on both the Wills and TIA policies.
Q. When did you first review Wills' Document Retention Policy?
A. Almost immediately after I arrived at Wills.
Q. Who provided you with a copy of the Document Retention Policy?
A. I believe that it was Gordon Watson, but I'm not certain, it may have been Andrew Foyle, a solicitor with the London firm Lovell, White & Durrant, who represented BATCo. He was in Australia at the time and gave me an induction to smoking and health litigation and the document retention policy. Foyle had a great deal of experience with BAT-style document retention.
Q. Do you recall what the date of the document was?
A. No.
Q. Do you recall how long the document was?
A. I think it was between three and six pages long, but I'm not sure.
Q. Who at Wills had copies of the Document Retention Policy?
A. Senior managers - the heads of different departments.
Q. What did the written Document Retention Policy say?
A. I don't recall the specific language of the Policy. The written document's primary purpose was to provide cover for the actual document destruction enterprise, to ascribe an innocent housekeeping justification for the widespread destruction of sensitive documents. The

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Document Retention Policy wasn't simply the written policy itself, but the corporate knowledge of how the Policy was to be applied apart from the written language. My recollection of the Document Retention Policy comes not from the written document, but how it was explained to me by Nick Cannar, Andrew Foyle, Brian Wilson, a partner at Clayton Utz, and others, rather than from the document itself, since the written document
was incomplete in terms of describing the actual workings and purpose of the Document Retention Policy.
Q. What do you mean by incomplete?
A. The Document Retention Policy, as written, required widespread destruction of documents, including the elimination of all scientific reports after a certain time period,
but only at certain specified time periods and without regard to whether a document was helpful or harmful. The Document Retention Policy itself - and by that I mean the actual
BATCo, BAT Industries, Wills Document Retention Policy, not the piece of paper - was specifically designed to destroy potentially dangerous documents - documents that could be used against the BAT Group in litigation. Because of the possibility that the written
Document Retention Policy itself could be discovered, it wasn't written that way.
Q. What did the written version include?
A. Again, I do not recall the specifics, but I think that it described documents in terms of
general classes or categories.
Q. Did the Policy include a chart of document retention schedules?
A. I don't think so, not in the sense of a chart with specific time frames for holding on to
specific kinds of documents. As I recall, there were instructions regarding when to get rid
of documents, but it was couched in general terms.
Q. How did you become aware that aspects of the Document Retention Policy were not

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included in the written document?
A. The ins and outs of the Document Retention Policy were explained to me in detail at the beginning of my tenure at Wills by Nick Cannar and Andrew Foyle and further explained to me by Brian Wilson and Glenn Eggleton, solicitors for Clayton Utz. I also discussed the Document Retention Policy with numerous other counsel and members of Wills management during my time at Wills. It was made very clear very quickly.
Q. Who else at Wills was familiar with the Document Retention Policy beyond the written document?
A. All of the senior individuals at Wills. Those with responsibility for overseeing the implementation of the Policy within their areas of responsibility.
Q. Who specifically?
A. Gordon Watson, Phil Smith, and the heads of divisions such as sales, marketing, etc.
Q. Other than the destruction of documents, are you aware of any other aspect of the Document Retention Policy?
A. Yes. Another important component of the Policy was the routing of documents through lawyers for the purpose of "privileging" the documents. There were instructions under the Policy that some documents should include a notation to the effect of “for the purpose of legal advice” and be routed through a lawyer, so that a document which would not otherwise attract privilege would now attract privilege.
Q. Who told you about this aspect of the Policy?
A. Nick Cannar. He explained that scientific documents should be routed through lawyers if they were to be kept for any length of time.
Q. Did you personally have experience with this application of the Policy?
A. Only on one occasion.

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Q. Please describe it.
A. There was a BATCo report on passive smoking that was authored by a scientist at BATCo,
I think it may have been Sharon Boyse.
Q. How was it "privileged"?
A. I received a phone call from someone, I'm not certain if it was Nick Cannar or Peter Godby
or Ms. Boyse herself, alerting me to the fact that the document was going to be sent over.
Q. What happened?
A. I put the document in a safe after reading the material for future reference.
Q. What were you told regarding the legality of the Document Retention Policy?
A. I was told that the destruction of documents before proceedings were issued was legally
permitted and that therefore the Document Retention Policy was legal.
Q. What was your state of mind during your tenure at Wills about the Document Retention Policy?
A. Uncomfortable. I was uncomfortable about the Document Retention Policy and, as I learned more, became uncomfortable about its implementation.
Q. Why?
A. The Document Retention Policy was a contrivance designed to eliminate potentially damaging documents while claiming an innocent “housekeeping” intent. While I was uncertain about whether the ruse was legal or not, I knew that it was a ruse and that made
me uncomfortable. The policy didn’t pass the smell test. The whole purpose was to keep evidence out of the courts.
Q. At the time you started working at Wills did you discuss the implementation of the
Document Retention Policy with anyone?

A. Yes. It was part of the initial discussion about the Document Retention Policy that I
had
with Nick Cannar and Andrew Foyle. When I first started, I was told by Nick Cannar that the Document Retention Policy had been implemented by the law firm of Clayton Utz,

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and
that all documents at Wills that were potentially damaging to the BAT Group had been destroyed or otherwise put beyond the reach of discovery. Nick told me that Clayton Utz had spent a good deal of time traveling around Australia after the introduction of the Policy in the mid-1980s implementing the Policy. Nick told me that while the ongoing implementation of the Policy was being managed by Clayton Utz, that I should nevertheless continue to pay attention. Andrew Foyle, Peter Godby, Phil Smith, Gordon Watson, and Brian Wilson and other lawyers at Clayton Utz all at some point told me that
the document issue had been addressed.
Q. Did there come a time during your tenure that you came to question the effectiveness
of the implementation of the Document Retention Policy?
A. Yes.
Q. When?
A. When I visited the Scientific Research Group at Pagewood for the first time.
Q. When did you visit the Scientific Research Group at Pagewood for the first time?
A. I visited Pagewood at some point a month or two after I had started working at Wills to
familiarize myself with the facility and meet the management there.
Q. Why did you come to question the effectiveness of the implementation of the Document Retention Policy when you visited Wills' Scientific Research Group?
A. During the course of this visit, I examined some of the documents in the SRG library.
What I saw alarmed me, because it was immediately apparent that the Document Retention Policy had not been fully implemented despite assurances to the contrary.
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Q. How was it apparent?
A. The research facility at Pagewood was where many of the scientific research reports prepared by our overseas affiliates, including BATCo and Brown & Williamson, as well as
our own reports, were kept. Just taking a quick look at the documents, I became fairly certain that these documents included the kind of sensitive smoking and health documents
that were supposed to have been destroyed under the policy, so it was clear to me that the
policy had not been completely adhered to.
Q. What do you mean by sensitive?

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A. That the documents would be damaging to the BAT Group if they ever had to be produced
by Wills in smoking and health litigation, or if they became public.
Q. How did you know that they were sensitive?
A. I recall that even just reading the titles and skimming the documents, that the subject
matter related to the sorts of topics that Nick had said had been taken care of. While I'm
not a scientist, it seemed pretty clear that these documents shouldn't have survived the
implementation of the Document Retention Policy.
Q. Do you recall what subjects these documents addressed?
A. I don’t remember the specific documents, but they covered a broad range of smoking and
health topics including addictiveness of smoking, the relationship between smoking and
disease, the use of nicotine technology, among others.
Q. Were these sensitive documents Wills research documents or other BAT Group companies’ documents?
A. Both, although I believe most would have been BAT Group docs considering the small
size of Wills' research operation.
Q. How many sensitive documents were there?
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A. I'm not sure. There were four or five large filing cabinets of scientific reports. I only
went
through a very small sample of what was there, but even in that small sample I came
across numerous documents that appeared potentially damaging to BAT.
Q. Do you know whether the Document Retention Policy was applied at Pagewood at
all?
A. Yes. Glenn Eggleton of Clayton Utz had spoken to the staff at Pagewood about Wills'
Document Retention Policy and had given them specific instructions about what
documents to destroy and what documents to keep.
Q. Do you know whether documents were actually destroyed at Pagewood pursuant to
those instructions?
A. No, I do not. It was clear to me that even if some documents had been destroyed prior

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to
my visit to Pagewood, many more that should have been destroyed under the Policy had not been.
Q. Did you ask Graham McGregor or Tas Wilson whether any of the documents had
been destroyed?
A. No. I had just met them and thought it better to speak with Nick Cannar first. I didn't
want to begin my relationship with them with an interrogation.
Q. What did you do following your visit to Pagewood?
A. I picked up the phone and called up Nick Cannar.
Q. Do you recall whether you called Nick Cannar that day?
A. I believe so, if it was not that day, I would have called him the next day.
Q. Why did you call Mr. Cannar rather than Mr. Watson or someone else at Wills?
A. Nick Cannar was responsible for document retention policies for BAT companies worldwide. I reported directly to Nick on matters relating to smoking and health litigation,
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so he was the logical person for me to contact. Plus, Nick Cannar was the individual who
had told me that the potentially damaging documents that I had just discovered at Pagewood had been destroyed.
Q. What did you tell Mr. Cannar?
A. I told him that I had just returned from Pagewood and that it appeared that there was a
substantial collection of sensitive documents of the kind that Nick had told me should have been destroyed under the Document Retention Policy.
Q. How did Mr. Cannar respond?
A. He thanked me for raising the issue. Nick told me that the issue concerned him greatly, for
the reasons I have explained previously regarding the risk for the BAT Group, BATCo, and, particularly, Brown & Williamson raised by any operating company having sensitive documents that could be discovered. He told me that someone would need to go out to Pagewood to apply the Document Retention Policy there.
Q. What happened next?
A. I asked Nick Cannar if he could send someone to Australia to help me review the implementation of the Document Retention Policy at Pagewood. Cannar said that he would, but that he, David Schechter, who had global responsibility for supervising the

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implementation of the BAT Group’s document retention policy, and Andrew Foyle were unavailable, but that he would send other solicitors from Foyle's firm, Lovells, who had
experience dealing with document management issues. I know that in my affidavit I stated
that this was when Nick sent Foyle to Australia. My recollection was refreshed during the
course of my deposition that while individuals from Lovells were sent to Australia following my discovery of the failure to apply the Document Retention Policy at Pagewood, Andrew Foyle was not among them.
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Q. Are you aware of whether the Document Retention Policy was implemented more
successfully elsewhere at Wills?
A. Yes. For example, in the Marketing Department, which was located in the same building
in Sydney as the Legal Department, I know that the Document Retention Policy was applied properly.
Q. How do you know that the Document Retention Policy was applied at the Marketing
Department?
A. Because of the close proximity of the Marketing Department, I visited it with some frequency and it was clear from the storage on site and state of the department, that the
Policy was being applied.
Q. How often would you visit the Marketing Department?
A. Regularly.
Q. Did you ever have occasion to review Marketing Documents?
A. Not really, although I do recall seeing a document during a visit that attracted my attention.
Q. What was the document?
A. It was a market research study done in Adelaide - a city in Australia - on the particular
appeal of a certain cigarette brand in the gay community. I noticed that the market research included information by age group, and the ages surveyed went as young as early
teenagers. I recall saying to a member of the Marketing Department, I believe Kevin Dring, that I didn't think we were supposed to be marketing to kids that age, and he

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replied
that it wasn't marketing it was simply surveying to see what they thought about the cigarette.
Q. Earlier, you stated that Foyle was in Australia during the start of your time at Wills.
Do you know why Foyle was in Australia?
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A. No. I assume that my induction to Wills on smoking and health and document retention
matters was one purpose for his visit, but I don't know if there were others as well. There
was a lot of activity by BATCo in Australia due to both the recent takeover of Wills from
Amatil, and the AFCO case.
Q. What did Foyle do while he was in Australia?
A. He briefed me about smoking and health litigation and the Document Retention Policy, the
dos and don'ts, the ins and outs, and how it all worked.
Q. What did he say?
A. He echoed and provided additional details about some of what others had previously told
me regarding the Document Retention Policy.
Q. Can you be any more specific?
A. No.
Q. Did you share any of your aforementioned concerns about the Document Retention
Policy with Foyle while he was there?
A. Yes. I let him know that I thought that a review was in order.
Q. Did Foyle do anything else while in Australia?
A. I suppose he must have, but I have no specific knowledge of it.
Q. Do you know whether Foyle visited Pagewood and met with Graham McGregor and
Tas Wilson of the SRG during his visit?
A. No, I don't know.
Q. How long was Foyle in Australia?
A. I believe he was in Australia for approximately a week.
Q. How many times did Andrew Foyle visit Australia?
A. I'm not absolutely sure. I expressed uncertainty during my deposition on this matter,

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while I believe he only visited once, I am not certain.
Q. Did you have communications with Mr. Foyle after he left Australia?
A. Yes. After Foyle left we continued to speak and correspond regarding the potential changes to the Document Retention Policy.
Q. Did anything come of these discussions?
A. Yes. Foyle authored a memorandum on the Wills' Document Retention Policy that offered
comments and raised several questions regarding Wills' Document Retention Policy.
Q. Is that memorandum the "Foyle Memorandum" quoted in the McCabe decision?
A. Yes.
Q. Did you receive a copy the Foyle Memorandum?
A. Yes.
Q. Please turn back to U.S. Exhibit 77,832, the McCabe decision. In paragraph 26 of the decision, Justice Eames writes that in the Foyle Memorandum “Foyle expressed the concern of BATCo that because Wills had had access to sensitive BATCo research documents, through a computer link to England, that might lead to the discovery of the BATCO documents in any Australian proceedings and also documents of other Group companies.” Did Foyle ever express a similar concern to you?
A. Yes. Foyle explained to me that the importance of having and strictly adhering to the
Document Retention Policy was to prevent potentially damaging documents from being discovered that could damage not only Wills, but also its parent and sister companies, in
light of Wills' possession and access to documents from Southhampton and elsewhere in the BAT Group. There was a particular concern that Brown & Williamson would be vulnerable in litigation in the United States, and that the documents could be very
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damaging for it. Also, such concerns were raised directly in the Foyle Memorandum.
Q. Justice Eames's opinion quotes from the Foyle Memorandum a number of problems that Foyle identified with the Wills Document Retention Policy. Paragraph 27(a) quotes:
The wording of the policy (coupled with timing of its introduction) might lead to the inference that the real purpose of the policy was to destroy sensitive smoking and health documents.
Do you recall Andrew Foyle expressing such a concern?
A. Yes. It was a particularly pressing concern, since the real purpose of the Policy was, in fact, to destroy sensitive smoking and health documents.
Q. The next concern listed by Foyle in his Memorandum is quoted in Paragraph 27(b):
Aspects of the implementation of the policy might support that inference, for example the immediate destruction of the unpublished enclosures to the SRG letters.
Do you know what was being referred to in the Foyle Memorandum by "unpublished enclosures to the SRG letters"?
A. Yes. I believe that refers to the unpublished scientific studies and research notes that may sometimes be enclosed along with letters from the SRG.
Q. Do you recall whether Foyle discussed this concern with you?
A. Yes. Both in the Foyle Memorandum and directly.
Q. At paragraph 27(d), Justice Eames quotes Foyle's concern expressed in the Foyle Memorandum that:
The retention of the BATCO reports might encourage a plaintiff to seek discovery of BATCO's documents, either by asserting that Wills has control over documents in the possession of BATCO, or by using the Hague Convention. The research reports might enable a plaintiff to frame a Hague Convention request for documents with the requisite degree of specificity and/or to identify the BATCO employee from whom oral testimony is required.

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Do you recall Foyle expressing this concern?
A. Yes.
Q. At paragraph 27(e), the following concern in the Foyle Memorandum is quoted:
Wills access to the BATCO computer gives them the de facto right to details of results of BATCO's research. The summaries of the reports which are on the database are sufficiently informative to be of real interest to a plaintiff's lawyer.
Was any action taken as a result of this concern?
A. Yes. At some point while I was at Wills I pulled the plug on Wills' computer access to BATCo, precisely because of this concern. I don't recall precisely when I did so in relation to when I received the Foyle Memorandum. I may have already disconnected Wills from BATCo's computer research by the time I read the Foyle Memorandum, but I don't recall.
Q. Was BATCo aware that you disconnected Wills from its system?
A. Yes. I did so because of BATCo's concerns.
Q. How did you "pull the plug"?
A. I asked the librarian at Pagewood to close the connection, and Graham McGregor confirmed to me that she did.
Q. Justice Eames quotes, at paragraph 28(2) Foyle's observation that:
It should be assumed that Wills' documents (what is in them and what has happened to them) will be a matter of great interest to a plaintiff's lawyer in a product liability action. How Wills responds to questions about its documents will require careful thought, especially because of the implications which the answers may have for the BAT group as a whole. It would be sensible, therefore, to assess the nature and extent of any problems which the current document retention policy may pose and to take appropriate remedial action now, rather than wait for the litigation to begin. Generally, what is needed is a strategy for handling the documents issue in litigation.
Do you recall this paragraph of the Foyle Memorandum?
A. I don't recall the exact words, but I do recall this observation.

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Q. Do you know what is meant by "Wills' documents (what is in them and what has happened to them) will be a matter of great interest to a plaintiff's lawyer in a product liability action. How Wills responds to questions about its documents will require careful thought, especially because of the implication which the answers may have for the BAT group as a whole."?
A. Yes. Foyle is referring to the fact that some documents if discovered may be harmful to the BAT Group, but will at the same time raise issues regarding what happened to the other, destroyed, documents, and that there will be consequences for not just Wills, but for the whole BAT Group.
Q. In the McCabe decision in paragraphs 29 through 32 on pages 11 through 12, some of the questions asked by Foyle in his Memorandum are quoted. Are they quoted accurately?
A. To the best of my recollection, the questions that are quoted there are quoted accurately, however that is not the extent of the questions asked in the Foyle Memorandum.
Q. On pages 13 through 17, the Wilson response to the Foyle Memorandum is recorded.
Does the response incorporate the Foyle Memorandum questions?
A. Yes. I believe it includes the full seven questions posed by Andrew Foyle.
Q. Do you recall Foyle raising these issues in the Foyle Memorandum?
A. Yes.
Q. Do you know why Foyle asked these questions?
A. Yes. There were serious concerns at BATCo that Wills' Document Retention Policy might leave the BAT Group vulnerable. Foyle was trying to strike the proper balance between destroying more documents, thereby risking an adverse inference against the companies; and not destroying more documents, thereby risking their discovery and use against the

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companies in litigation. He also was trying to determine the potential impact of the document destruction that had already taken place.
Q. Were these hypothetical questions?
A. No. These were specific and real questions regarding what to do with the Wills' Policy to be answered by Clayton Utz.
Q. In paragraph 29 of Exhibit 77,832, Justice Eames quotes the first of the seven questions posed by Foyle:
1. To what extent is there a risk that the destruction of documents in accordance with the 1985 retention policy will cause the Court to apply the adverse inference principle, taking into account:
(a) the wording of the policy,
(b) the circumstances prevailing at the time it was introduced (e.g. whether product liability actions had been threatened against Wills or the industry generally),
(c) the extent to which Wills will need to claim privilege for documents produced in 1985 and later, on the grounds that the documents were produced in contemplation of anticipated proceedings.
What is referred to by the "1985 retention policy"?
A. That is the Wills Document Retention Policy that was adapted from the BAT Industries Policy in 1985. Earlier in my testimony I referred to that policy as having been created in the early to mid 1980's.
Q. At the time of the Memorandum, was BATCo concerned about the risk of an adverse inference being applied by the Court due to the application of the Document Retention Policy?
A. BATCo recognized that if a court determined that Wills was destroying documents for the very purpose of keeping them out of litigation, that there was a substantial risk of an adverse inference, that was why great care was taken to make the Policy appear to be

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guided by motivations other than its actual purpose.
Q. In paragraph 32 of the McCabe decision the third question posed by Foyle is set forth:
3. Should changes be made to the way in which the policy is currently being applied, for example, in relation to the SRG documents?
You've testified that the SRG was Wills' Scientific Research Group. Why was BATCo concerned about SRG documents specifically?
A. Because the SRG documents were those that were shared globally among the BAT Group companies, and also those that posed the greatest threat if discovered in litigation. They were the primary focus of the Document Retention Policy.
Q. Paragraph 32 of McCabe quotes the fourth question as:
4. What should be done about the copies of the BATCO research reports held by Wills? In this connection:
(a) Would the continued retention of these reports compromise Wills' position via a vis the destruction of its other documents?
This question should be answered on the basis of the information given in this memorandum on the content of the reports. If more information is needed it can be supplied by LWD. It would be undesirable for Clayton Utz to seek information from Wills about the reports.
(b) Is there any reason why Wills should not now destroy its copies of most of the reports, if the motive for doing so were that the information in the reports is not relevant to Wills' Current "research mission"?
(c) Would the termination, or the restriction, of Wills's access to the reports database on the BATCO computer cause any problems?
(d) Does the Caudwell threat affect the position?
The question acknowledges that Wills has BATCo research reports, correct?
A. Yes.
Q. What is LWD?

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A. That is Lovell, White & Durrant, Andrew Foyle's firm that represents BATCo.
Q. What is meant by the question "Would the continued retention of these reports compromise Wills' position via a vis the destruction of its other documents?"
A. BATCo was concerned that the destruction of some scientific documents, accompanied by
the retention of others, would enable a plaintiff or court to determine that Wills was selectively destroying documents.
Q. Was Wills selectively destroying documents?
A. Yes. That was one of the aims of the Document Retention Policy.
Q. What was the "Caudwell threat"?
A. That refers to a Mr. Cauldwell, who sent a letter to Wills threatening legal proceedings
against Wills in November 1989. Foyle feared a court would treat the destruction of documents in a more critical fashion if Wills anticipated litigation, even if it were not
actually pending.
Q. At the time of the Foyle Memorandum was there any question at Wills that the purpose of the Document Retention Policy was to destroy documents to protect the litigation position of Wills and the BAT Group, particularly Brown & Williamson?
A. It was clear to all in the know what the purpose of the Policy was.
Q. Did you share the Foyle Memorandum with anyone else?
A. Yes.
Q. Who?
A. Pursuant to Andrew Foyle directions, I forwarded the Foyle Memorandum to Brian Wilson
at Clayton Utz for his review. At a later point I sent the Foyle Memorandum to Stephen Walker at Allen Allen & Hemsley. I sent a copy to Gordon Watson. There may have been others. I discussed the Foyle Memorandum with Nick Cannar, so I know that he had a
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copy, but he would've received it directly from Andrew Foyle, not from me.
Q. Why did you provide a copy to Brian Wilson?
A. The Foyle Memorandum raised several questions for review by Australian counsel. Nick
Cannar, Andrew Foyle, and I had, while Andrew was drafting the Memorandum discussed
which Australian counsel would address the questions raised by the Memorandum. While I lacked confidence in Clayton Utz, Nick and Andrew thought that Wilson should respond

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to the Memorandum first. When Foyle sent the Memorandum to me, he also directed that I forward the Memorandum to Brian Wilson. I believe that Foyle drafted a letter to Wilson for my signature, to which the Memorandum was attached.
Q. Did Wilson respond?
A. Yes.
Q. What was his response?
A. He responded at some time in late March 1990, addressing Foyle’s questions, advising that
the destruction of documents before the commencement of any legal proceedings was lawful, and proposed a strategy for handling the documents issue.
Q. In the McCabe decision, Justice Eames includes, on pages 13 through 17, Wilson's
letter responding to the Foyle Memorandum. Did you receive a copy of this letter?
A. Yes.
Q. Is the letter faithfully reproduced in the McCabe decision?
A. To the best of my recollection, yes.
Q. Do you recall whether the recommendations set forth in Wilson's letter were adopted
by Wills?
A. Subject to some further review, most were.
Q. What was the emphasis of Mr. Wilson's advice?
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A. That as long as we could argue that the documents being destroyed under the Document
Retention Policy were not being destroyed due to litigation concerns, then it was legal.
Q. Were the documents destroyed under the Document Retention Policy being destroyed due to litigation concerns?
A. Yes, which is why the Policy had to be written in such a way as to include other justifications for its existence.
Q. Did you meet with Wilson following receipt of his letter responding to the Foyle Memorandum?
A. Yes. I believe the meeting was in early April 1990. Because of the importance of the issue Nick Cannar himself came from London to attend it. Nick Cannar, Brian Wilson, John Oxland, a solicitor with Clayton Utz, and myself were present at the meeting.
Q. I am handing you U.S. Exhibit 89,419. Have you seen this document before?
A. Yes. It is a letter sent to me from Nick Cannar, prior to his trip to Australia.
Q. What is the date of the letter?

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A. 16 March 1990.
Q. The first sentence of the letter reads:
Further to our conversation yesterday, this is to confirm that I would like to visit W.D. & H.O. Wills during the week commencing 2nd April.
Did Mr. Cannar in fact visit Australia during the week of April 2nd?
A. Yes. That is the visit I had just mentioned.
Q. The next paragraph begins:
Matters which I would particularly like to cover include the following:-
1. AFCO Case - If the case has not already settled by the 2nd April then I think we need to review urgently alternative settlement strategies.
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Did the AFCO case settle by the 2nd of April, 1990?
A. No, it did not.
Q. Do you know why it didn't settle?
A. Because certain proposed admissions to be made by the TIA were rejected by the overseas parent companies.
Q. Would that be Philip Morris, RJ Reynolds, and BATCo?
A. I believe so.
Q. Do you know why Mr. Cannar was so concerned about settling the AFCO case?
A. Nick was extremely concerned that a decision on passive smoking in Australia would set a dangerous precedent that would seriously impact other, larger markets.
Q. The second matter listed in the letter as a subject to be covered during Mr. Cannar's visit is:
2. Document retention policy - We have developed a draft research document retention policy for the B.A.T. Industries Group and a copy is enclosed. I would like to discuss this proposed policy with you and how it might be applied in Australia.
Do you recall discussing a "draft research document retention policy for the B.A.T. Industries Group" with Mr. Cannar during his visit?
A. Yes. The Wills' Document Retention Policy review was part of a larger, BAT Group wide review of the document retention policy. All of the BAT Group companies' document

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retention policies were kept in lock step as much as possible, to ensure that no company
would leave an opening through which damaging documents could be discovered and used
against the rest of the BAT Group. Since the discovery of BAT Group research documents
posed the greatest litigation risk, there was special attention paid to them in reviewing the
document retention policy.
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Q. Do you recall the "draft research document retention policy for the B.A.T. Industries
Group" that Mr. Cannar wrote was enclosed along with this document?
A. Yes.
Q. Do you recall whether anyone took minutes or notes of the April meeting between
you, Nick Cannar, Brian Wilson, and John Oxland?
A. Yes. John Oxland did.
Q. Please turn your attention to page 19, paragraph 42 of the McCabe decision. The decision refers to John Oxland’s notes from the April 2, 1990 meeting between Cannar, Wilson, Oxland, and yourself. Oxland’s note records Wilson advise to:
Keep all research docs which became part of the public domain and
discover them. As to other documents, get rid of them, and let other
side rely on verbal evidence of people who used to handle such
documents.
Do you recall Wilson offering such advice at this meeting?
A. I do not recall the exact words used by Brian Wilson, but I do recall him offering that
advice - to keep research documents that were in the public domain, and to destroy adverse
research documents that the public or plaintiff’s counsel would not be aware of.
Q. Was that recommendation accepted?
A. Yes. The recommendation was accepted.
Q. Do you recall anything else about the meeting?
A. I recall discussing the Foyle Memorandum and Wilson's letter responding to it. Otherwise,
I recall only the general discussion - that the Wills Document Retention Policy should be

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continued, that potentially damaging documents should continue to be destroyed, and that
an innocent explanation should be provided for the destruction.
Q. At the time of this meeting was Wills was involved in active smoking and health
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litigation?
A. No. At this time, Wills was not involved in active smoking and health litigation.
Q. At this time had Wills been threatened with smoking and health litigation?
A. Yes, I believe so. There had been the Cauldwell threat mentioned by Foyle in his Memorandum.
Q. At the time, did Wills anticipate that there would soon be a smoking and health action brought against them?
A. Yes, definitely.
Q. Was the fact that smoking and health litigation was anticipated viewed as an impediment to destroying documents?
A. No. The expectation of litigation was the primary reason for destroying documents, to
make sure that the damaging documents weren't still lying around to be discovered when a
lawsuit was filed.
Q. In this time frame were there any other meetings regarding the Document Retention
Policy?
A. Yes. There was another meeting attended by the same individuals, as well as Glenn Eggleton and Donna Staunton Mayne, solicitors at Clayton Utz, and other members of the
Clayton Utz research and computer staff.
Q. When?
A. I believe it took place on the same day.
Q. What was discussed at this meeting?
A. Clayton Utz's industry databases.
Q. What kind of databases?
A. Comprehensive tobacco industry databases coordinated through the Tobacco Institute of
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Australia that were held by Clayton Utz. It contained information from the member companies of the TIA - Wills, Philip Morris, RJ Reynolds, and Rothmans.
Q. What was included in the databases?
A. Scientific documents from the member companies, profiles of likely witnesses, information on judges. The databases served as giant storage facilities for company documents, but since they were at a law firm, rather than controlled by the industry companies, they were considered both privileged and beyond the reach of discovery. An element of the Document Retention Policy was that Wills and the other companies could destroy their own copies of documents held by Clayton Utz in their database, but receive
the documents back from Clayton Utz on a "grace and favor" basis.
Q. What is a "grace and favor" basis?
A. Clayton Utz had ownership of the industry's databases, therefore putting the documents in
it beyond the reach of discovery, since the tobacco companies didn't have power, control,
and custody over the documents. However, if companies wanted to retrieve a document from the TIA database held by Clayton Utz, they could request the document and receive it
on a "grace and favor" basis - on a voluntary basis from Clayton Utz. This was actually a
fiction; the companies could retrieve any document they wanted from the Clayton Utz database, but with this arrangement, if a plaintiff asked for a document the companies could say that they didn't control the databases and didn't have access to the document therein.
Q. Could a company retrieve documents from Clayton Utz that were from one of the
other member companies?
A. No. Company specific documents could only be retrieved by the specific member company.

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Q. What about the databases was discussed during this meeting?
A. How the databases would work and what they contained.
Q. Can you be more specific?
A. No. I recall wanting to see a demonstration of how the databases worked, but that wasn't provided at the meeting.
Q. Were attorneys at BATCo aware of the Clayton Utz databases?
A. Yes, absolutely. In fact, I exchanged communications with Nick Cannar, who was the head of BATCo's legal department, about at least one of the Clayton Utz databases, on medical and scientific materials.
Q. I am showing you U.S. Exhibit 89,400, Bates number 304003742. This is a letter dated October 3, 1990, from Nick Canner addressed to you, correct?
A. Yes.
Q. At the start of the second paragraph of this letter, Mr. Cannar refers to "your request that Sharon Boyse review the Clayton Utz database." Did you ask Mr. Cannar to authorize Dr. Boyse to review the Clayton Utz database?
A. Yes.
Q. Why?
A. Wills needed to be able to access medical and scientific material. As you can see, in the middle of the third paragraph, Mr. Cannar refers to "whatever medical and scientific material you are likely to require."
Q. The Clayton Utz law firm also represented the Tobacco Institute of Australia, correct?
A. Yes.
Q. Did Wills' Australian competitors also have access to the Clayton Utz databases?

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A. Yes, or at least those of our competitors who were also members of the Tobacco Institute
of Australia: Philip Morris, R.J. Reynolds, and Rothmans.
Q. So when scientists and lawyers at Wills needed access to medical and scientific material, they were supposed to get the material from the law firm that represented the Tobacco Institute of Australia?
A. Yes.
Q. Why did you ask Nick Cannar if he could have Sharon Boyse come to Australia from
BATCo's offices in England to review the Clayton Utz medical and scientific database?
A. I wanted someone with broader knowledge of the science than I had to determine that the
system worked and had the proper information.
Q. What was Mr. Cannar's response?
A. There was a much larger and more complete database of smoking and health materials that
was run by the industry's lawyers in the United States, I believe at the Covington & Burling or Shook, Hardy & Bacon law firms. He told me that Dr. Boyse had "no direct experience of the US medical and scientific database which I am told is extremely comprehensive." Mr. Cannar wrote that:

> I very much doubt if Clayton Utz can compete with the US database
> and unless they have something which is specific to Australia which
> is not contained on the US database then I imagine that it can
> amount to no more than a poor duplication of what the international
> industry already has.

Q. And when he referred to "what the international industry already has," he was referring to a medical and scientific database that was kept at the Covington & Burling or Shook, Hardy & Bacon law firms, in the United States?
A. Yes.

Q. What, if anything, did Mr. Cannar recommend to compare the contents of the U.S.
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law firm database of scientific and medical materials with the Clayton Utz database of scientific and medical materials?
A. He wrote me that he thought any comparison would have to be made by someone who had
worked directly with the U.S. database. He wrote:
I think it is very difficult for anyone who has not worked directly with the US database to make any sort of worthwhile comparison. I am not even sure of the extent to which John Rupp is in a position to do it.
Q. Who was John Rupp?
A. He was a lawyer for the Tobacco Institute in the United States, at the Covington & Burling
law firm in Washington, D.C.
Q. Given Mr. Cannar's belief that any comparison would have to be made by someone
who had worked directly with the U.S. law firms' database of scientific and medical materials, what did he say that Wills should do?
A. He recommended that we would either have to rely on U.S. sources when we needed scientific and medical material, or else we would have to pay for one of the U.S. lawyers
who worked with the U.S. database to fly to Australia, to compare the U.S. database to the
Clayton Utz database. He wrote:
I suspect that you are either going to have to take the view that whatever medical and scientific material you are likely to require can be made available to you from US sources or you are going to have to pay for an American lawyer who works with the US database to come over to Australia and make the evaluation.
Q. Were any of the other members of the Tobacco Institute of Australia concerned with
the reliability of the Clayton Utz industry databases?
A. Yes.
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Q. Were there discussions about that topic?
A. Yes. The heads of the legal department at the Tobacco Institute of Australia member companies would meet periodically to discuss matters of common interest, under the rubric of the "Legal Committee of Counsel."
Q. I am showing you U.S. Ex. 89,418, Bates numbers 304003686-3690. These are

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minutes dated January 25, 1981, of the Legal Committee of Counsel meeting on January 23, 1991, correct?
A. Yes.
Q. To be clear for the court, you were no longer at Wills by this date, correct?
A. That’s correct. I had left Wills one or two months earlier, in November or December, 1990.
Q. So you weren’t personally at this meeting?
A. No.
Q. These minutes were prepared by Philip Morris Limited, correct?
A. Yes.
Q. When you attended meetings of the Legal Committee of Counsel, on behalf of Wills in Australia, would you send minutes of those meetings to BATCo?
A. Yes, if minutes were prepared, I would do so. BATCo was our majority owner, and Nick Cannar kept close tabs on what went on at Wills.
Q. While you were still at Wills, were you and your counterparts at Philip Morris and R.J. Reynolds concerned about the effectiveness, utility, relevance, and necessity of the databases at Clayton Utz?
A. Yes, we were. That’s one of the reasons that I asked Nick Cannar to send Sharon Boyse to Australia to review the Clayton Utz database of medical and scientific materials.

Q. But you testified a moment ago that Mr. Cannar told you that he didn’t think it would be worthwhile for Dr. Boyse to come to Australia to make that review, correct?
A. That’s right. In the last paragraph of U.S. Ex. 89,400, he recommended instead that we at Wills either rely upon getting the medical and scientific materials we needed from U.S. sources, or else hire an American lawyer who was familiar with the U.S. database to come to Australia to review the Clayton Utz databases.
Q. On the third page of the Tobacco Institute of Australia minutes, U.S. Exhibit 89,418, refers to:
(a) seeking independent view of Shook, Hardy and Bacon

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Do you see that?
A. Yes, I do.
Q. Shook, Hardy and Bacon was among the U.S. law firms with access to the U.S. databases, correct?
A. Yes.
Q. So before you left Wills, was there any discussion of having one of the lawyers at Shook, Hardy & Bacon fly to Australia to review the Clayton Utz database of medical and scientific material?
A. Yes, there was. Mr. Cannar told me, in his October 3, 1990 letter, U.S. Ex. 89,400, that it was likely that the Clayton Utz medical and scientific database “can amount to no more than a poor duplication of what the international industry already has,” and he advised that we consider “paying for an American lawyer who works with the US database to come over to Australia and make the evaluation.”
Q. I'd like to return now to the early April 1990 meetings. What happened following
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the early April meetings attended by Nick Cannar?
A. As previously agreed by Nick Cannar, I sought the further opinion of another Australian law firm. I contacted the Australian law firm Allen Allen & Hemsley for a third opinion on the Document Retention Policy.
Q. Had you ever previously sought three legal opinions on a matter?
A. No. I have never done this before or since. In the face of such an obvious contrivance, I needed additional reassurance that the scheme was legal. I determined that I could live with the contrivance as long as I knew that it would be legally defensible. So I contacted Allen Allen & Hemsley.
Q. Please turn to page 20, paragraph 46 of the McCabe decision. This paragraph quotes from a letter that you sent to S.J. Walker of Allen Allen & Hemsley on May 16, 1990. Do you recall sending such a letter?
A. I do not recall that the date was May 16, 1990, but I do recall sending a letter to Mr. Stephen Walker regarding Wills’ Document Retention Policy, this is the request for a third opinion that I just mentioned.

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Q. Why were you writing to Allen Allen & Hemsley about the Document Retention Policy in May of 1990, when you had already consulted with Andrew Foyle of Lovells, Nicholas Cannar of BATCo, and Brian Wilson and John Oxland of Clayton Utz in regards to the Document Retention Policy?
A. Because the Document Retention Policy was a ruse. Since I was going to be signing off
on and executing this Policy I wanted to have full reassurance that it would pass legal muster. Nick Cannar had agreed in advance to an additional legal opinion.
Q. Paragraph 46 quotes from a passage in your letter to Mr. Walker. It quotes one of
the issues that you sought advice on as:
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The potential and substantial problem that would face our major shareholder in the event that any discovery made in Australia of BATCo’s research could be used by future plaintiffs in other jurisdictions especially the USA.
Do you recall seeking such advice from Mr. Walker?
A. Yes.
Q. Why were you concerned with the issue of BATCo research being used by future plaintiffs “in other jurisdictions especially the USA”?
A. For the previously discussed reasons, that documents were shared throughout the Group.
If a document were discovered from Wills it could be used against BATCo or Brown & Williamson or another operating company. This was the primary concern of Messrs. Cannar and Foyle. It was grave concern to them that a failure to destroy incriminating documents in Australia would lead to their discovery, which would seriously erode the efficacy of their global litigation strategy, since a key component was keeping the damaging documents out of the hands of plaintiff's attorneys.
Q. Paragraph 46 of the McCabe decision goes on to quote an additional concern about
which you requested advice in your May 16 letter that:
The retention by Wills on a selective basis of certain reports may highlight the fact that other documents have been destroyed and could well compromise the position of Wills with respect to the practice and operation of the Document Retention Policy.
Do you recall seeking such advice from Mr. Walker?
A. Yes.
Q. Why were you concerned about the selective retention of reports?

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A. Because a conclusion could be drawn from our selective retention of reports that we were
destroying other reports that were less favorable for us.
Q. Was Wills in fact destroying potentially damaging reports, while retaining favorable
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ones?
A. Yes. That was what was called for by the Document Retention Policy.
Q. Did you receive a response from Allen Allen & Hemsley on this matter?
A. Yes. I received a letter back from Allens, sometime in July. The response added a few
more recommendations, but generally approved of the Document Retention Policy.
Q. Starting on page 21 of the McCabe decision, and continuing on to page 25, Justice
Eames reprints sections of the letter from Allen Allen & Hemsley. Is the letter faithfully reprinted?
A. Save for the fact that it is incomplete, I believe that it is accurate.
Q. What advice offered by Allen Allen & Hemsley differed from Wilson's advice?
A. I don't recall.
Q. Was the purpose to destroy damaging documents?
A. Yes.
Q. So the advice was to assert a different rationale for the destruction of the documents?
A. Yes. That was consistent with Wilson's advice as well.
Q. After you received advice from Allen Allen & Hemsley, did you adopt the strategy
proposed in their advice?
A. No. At that point I referred the matter to Nick Cannar.
Q. Why after having the issue examined by a number of Australian attorneys did you
refer the matter back to Nick Cannar?
A. Because I reported to Mr. Cannar with respect to such issues, and I knew that the policy
had to be consistent with BAT’s Document Retention policy. I wanted him to have the last call on the matter.
Q. What did Mr. Cannar recommend?
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A. He counseled me to adopt the strategy proposed by Brian Wilson while taking into account the further recommendation of Allen Allen & Hemsley.
Q. At that point did you amend Wills' Document Retention Policy consistent with these recommendations?
A. I don't recall whether I did so personally, but I know the Policy was amended pursuant to these recommendations.
Q. When were these changes to the Document Retention Policy made?
A. I believe it would have been sometime after I had received the advice back from Allen Allen & Hemsley in July, but before my departure from Wills in late 1990.
Q. What was the substance of the changes to the Policy?
A. The changes were not substantive. There were some changes to the written policy incorporating the advice received from Foyle, Wilson, and Allen Allen & Hemsley to ensure that from the outside the Document Retention Policy appeared to be an innocuous housekeeping process, but I don't recall any significant change in either the purpose or procedures of the Policy. When I arrived at Wills the Document Retention Policy had been to destroy damaging documents while keeping those that were beneficial to the company, and that remained the Policy at the time I departed Wills. The Policy remained a contrivance, but one that I was told by three firms was legally defensible.
Q. Was it your opinion that the Document Retention Policy was legally defensible?
A. At the time, yes. I had three different law firms tell me so, so I accepted it. However, it became clear to me upon reading the McCabe decision and its application of the law that it was not legal.
Q. Did anyone review the changes made to the Document Retention Policy?
A. Yes. I sent a final draft of the Policy to Nick Cannar.

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Q. Did he sign off on these final changes?
A. I don’t recall whether he literally “signed off’ on the changes, but he did review and approve them.
Q. Once the updated Document Retention Policy was put in place, do you know if it was implemented?
A. That was the intention, but I was not with Wills long enough afterwards to know for sure whether it was or not.
Q. Earlier you discussed your discovery of sensitive documents at Pagewood that you believed should have been destroyed under the Document Retention Policy. Do you know whether the issues that you raised with Nick Cannar regarding sensitive documents at Pagewood were addressed?
A. Yes. At Nick Cannar's direction Lovells sent a team of three lawyers to Australia for the express purpose of going to the Scientific Research Group library at Pagewood to ensure the implementation of the Document Retention Policy for the large number of sensitive documents that I had reported were still in existence at Pagewood in contravention of the Document Retention Policy.
Q. Did you have any involvement in this action?
A. I made the introductions at Pagewood for the lawyers from Lovells, but I did not witness or supervise their work at Pagewood.
Q. Do you recall the names of the lawyers from Lovells who went to Pagewood?
A. No.
Q. Do you know what they did?
A. I do not know what they did. I know that Nick Cannar sent the lawyers all the way to Australia to address the problems of existing sensitive documents at Pagewood that should

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not have been there. I know that the purpose of their trip was to ensure the implementation of the Policy, which would have involved destroying or sanitising the documents in some way. I know that they left after about a week, and I was told that more work still needed to be done and that they would return with six lawyers to continue the work at Pagewood.

Q. Did you make any effort to determine what the Lovells employees had done at Pagewood?

A. No.

Q. Why would you have let these foreign lawyers address these document issues at your company without your supervision?

A. I took my instructions from Nick Cannar at BATCo. In response to a problem that I raised with him, he decided to send lawyers to Pagewood to address document retention issues. Both he and the lawyers that he sent had far more experience in implementing the document retention policies than I did. Implementation of the Document Retention Policy was primarily a concern from BATCo and Brown & Williamson, my concern was ensuring that Nick Cannar was ok with the situation at Wills. I had no affirmative desire to be any more involved in the implementation of the Document Retention Policy than I needed to be. I called in experts to do a job and I let them do it.

Q. Do you know whether the six lawyers discussed ever returned to Pagewood?

A. It is my understanding that shortly after my departure from Wills a team of lawyers returned to the library at Pagewood, and destroyed the potentially damaging documents and shut down the library.

Q. Were you aware of any other actions taken to ensure Wills' compliance with its Document Retention Policy?

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A. Yes. David Schechter and a partner from the firm Shook, Hardy & Bacon named Robert
Northrip came out to Australia for the dual purposes of addressing document retention issues and supervising the litigation, in a case named Gallagher, that was initiated against
Wills.
Q. What was the subject of the Gallagher litigation?
A. It was a smoking and health case in Western Australia. I think that there was some question as to whether a man had contracted cancer as a result of smoking or exposure to
asbestos.
Q. Do you have any information regarding the actions taken by Schechter and Northrip
in Australia?
A. Very little. There was an initial miscommunication between Schechter and myself regarding the Gallagher litigation. I was under the impression that Schechter was coming
to Australia to help me with Gallagher, when in fact he was coming to Australia to run Wills' defense of the case. I know that as part of his preparations for the defense of Gallagher he wanted to interview and retain different counsel to defend Wills in the litigation and to review document retention policy compliance.
Q. Do you know when Mr. Schechter came to Australia?
A. It would have been toward the end of my tenure, but I don't know exactly when.
Q. I am handing you U.S. Exhibit 89,404, Bates Number 202215750. What is the date
on the letter?
A. 27 October 1990, but it is also stamped 29 October 1990.
Q. Who is the letter from?
A. David Schechter.
Q. Please read the first sentence of the second paragraph.
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A. "During the week of October 29th, I will be in Sydney with Fred Gulson of Wills (010-
612-259-6333)."
Q. Does this document refresh your recollection regarding the timing of David Schechter's visit?
A. Yes. It would have been late October through early November of 1990.
Q. Did Mr. Schechter return to Australia before you left Wills?
A. I believe not.
Q. Going back to U.S. Exhibit 89,404, who is the letter to?
A. Patrick Sheehy.
Q. Who is Patrick Sheehy?
A. He was the head of BAT Industries, the highest ranking individual in the entire BAT Group.
Q. So David Schechter had a direct line of communication to Patrick Sheehy, the highest
ranking individual in the BAT Group?
A. Yes.
Q. When did you leave Wills?
A. In late 1990, November or December.
Q. Why did you leave Wills?
A. I was fired.
Q. Why were you fired?
A. I was not given a reason other than Gordon Watson telling me that the "mix wasn't right."
Q. Did you try to find out why you were fired?
A. No. I was somewhat relieved, because Gordon was correct, the mix wasn't right. I wasn't
happy at Wills and I was very stressed.
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Q. Did you file a claim against Wills over your termination?
A. No. I did have a letter sent to Wills inquiring about a settlement, but nothing came of
it
and I dropped the matter.
Q. At what time did you become familiar with the McCabe case?
A. In April 2002, I read the decision by Justice Eames in the McCabe case.
Q. How did you come to read that decision?
A. A friend of mine called me up to say that I was discussed, at some length, in an legal

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opinion relating to my days at Wills. I read the decision, and while I was surprised that
certain documents had emerged in the opinion that I had thought would never have been
revealed by Wills, I was impressed that Justice Eames was able to put it all together and
get it right.
Q. Did anyone contact you following the decision?
A. Yes. Keith Steele a partner at Freehills, who apparently were acting for Brian Wilson
of
Clayton Utz in the aftermath of McCabe, wrote me a letter.
Q. I'm handing you U.S. Exhibit 65,085. Is this your affidavit?
A. Yes.
Q. Please turn to seventh page of the Exhibit. Is this the letter from Freehills?
A. Yes.
Q. What it the date of the letter?
A. 23 April 2002.
Q. Is that shortly after the McCabe decision was released?
A. Yes.
Q. What was the purpose of the letter from Mr. Steele?
A. As you can see in the final paragraph of the first page, it was to see if I would be
willing to
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discuss Justice Eames's findings against Brian Wilson, and perhaps help them by offering
some form of evidence.
Q. Did you end up providing that evidence?
A. No. I wrote a letter to Freehills explaining that Justice Eames got it right in McCabe,
and
that I would not be willing to offer evidence on Wilson's behalf.
Q. Please turn to the tenth page of U.S. Exhibit 65,085. Is this your letter to Freehills?
A. Yes.
Q. What is the date of the letter?
A. 7 May 2002.
Q. You previously stated that you read the Cowell decision reversing McCabe, correct?

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A. Yes.
Q. Did you take any action after reading the Cowell decision?
A. Yes. Justice Eames had gotten it right, and Cowell went ahead and reversed it. I read
in
the Australian Financial Review an apology and retraction by that newspaper to Clayton Utz over the previously published statement that the law firm had been involved with Wills in the improper destruction of documents. This made me angry. I decided to call Peter Gordon. I called Peter Gordon, who was the solicitor for the plaintiff in McCabe and
let him know that despite the reversal, he had gotten it right.
Q. What happened after you called Peter Gordon?
A. I agreed to meet with him, but was very clear that I would not say anything on the record.
Q. Why not?
A. I did not want to become directly involved.
Q. What happened at the meeting?
A. I discussed with Peter the facts of McCabe and shed light where I could, but despite Peter's
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request, refused to say anything publicly or for a court filing. I told Peter about my correspondence with Freehills. Peter told me that not only did the correspondence not make it into the Cowell case, but that Freehills submitted papers regarding my state of mind that were directly contrary to those letters. I didn't believe Peter, but he showed me
the papers, and I was shocked that Freehills would, after I had made my position clear in
writing, knowingly misrepresent it to the Court.
Q. Did you agree to provide a statement at the meeting?
A. No. But I continued to talk to Peter, and he talked with my lawyer, Anthony Cordato. Ultimately, I agreed to write and sign an affidavit setting forth my recollection of the
events addressed in McCabe.
Q. Is the affidavit you just referred to the affidavit in U.S. Exhibit 65,085?
A. Yes.
Q. Do you know whether this affidavit was ever used in the appeal of Cowell to the Australian High Court?
A. My understanding is that it was not used.

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Q. How did you first come in contact with the United States Department of Justice in
relation to this case?
A. I was contacted by Phillip Rowell, of the firm Ebsworth & Ebsworth, regarding whether I
would be willing to meet with individuals from the U.S. Department of Justice in relation
to the document destruction issues that were the subject of my affidavit.
Q. Did you agree to meet with representatives of the Department of Justice?
A. Eventually. My recollection is that there were many phone calls before I finally agreed
to
meet with representatives of the Department of Justice.
Q. Where did the meeting take place?
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A. The Sydney offices of Ebsworth.
Q. Who was present?
A. My counsel Tony Cordato, Mr. Rowell, Sharon Eubanks and Brett Spiegel from the
Department of Justice, and myself.
Q. When was the meeting?
A. Sometime after I swore the affidavit in February 2003, but before the High Court of
Australia turned down the Application for Special Leave in Cowell.
Q. What was the subject matter of the meeting?
A. It was something of a "get-to-know-you" session, we talked generally about the United
States' case, the fact that they might want me to be a witness. Very little was discussed in
relation to my affidavit or the potential substance of my testimony.
Q. At what point in time did Peter Gordon come to represent you in this case?
A. Between my first and second meetings with the Department of Justice - I think a little
over
a year ago.
Q. Why?
A. I felt that Mr. Gordon's experience with tobacco companies was likely to be more useful to
me than Tony Cordato's.
Q. Did you meet with the United States again?

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A. Yes.
Q. When?
A. I believe it was June of 2004. Counsel for the United States were in Australia for the
testimony of Nick Cannar. We met at the Sheraton Hotel.
Q. What was discussed?
A. Primarily whether or not I would be willing to testify at trial.
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Q. Did you agree to testify at that time?
A. No.
Q. When did you agree to testify?
A. Not until much later, in fact I only made the final decision that I would be willing to
testify
during my deposition in this case.
Q. I am now handing you U.S. Exhibit 89,420. During your deposition, do you recall
counsel for the Defendants showing you this document, the Natural Extracts Case?
A. Yes.
Q. Were you a party to this litigation?
A. Yes.
Q. Could you please summarize the case for the Court?
A. Yes. A few years after I departed from Wills, I invested in an agribusiness company in
the
tea tree oil market. The goal of the company was to purchase the largest tea tree oil farm
in Australia and to develop a line of tea tree oil products. The individual who had been
the
primary stakeholder of the company, a Mr. Stotter, departed from the company before it
was able to purchase the property, known as "Main Camp", ostensibly to pursue another,
unrelated business. A short time afterwards, I discovered that Mr. Stotter had in fact
stayed in the tea tree oil industry and ultimately purchased the "Main Camp" property.
Under Australian law, in order to bring a shareholder derivative action, a majority of
shareholders must support the action. Since the majority of shares in the company were
held by Mr. Stotter or parties related to him, the other shareholders and myself engaged
in

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a "sham" deal to take control of the company for the sole purpose of bringing a shareholder derivative action. I immediately acknowledged this to the court. The court ended up ruling in my favor in the case, and Mr. Stotter had to make a full accounting to
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the company.
Q. Counsel for Defendants implied at your deposition that your actions in the Natural
Extracts case were fraudulent. Were they?
A. No, they were not. While we admittedly engaged in a sham transaction in order to gain
standing to bring the lawsuit, there was no attempt to hide the nature of the transaction
from the court in the Natural Extracts case - in fact, the very purpose of the transaction
was to be able to get into court, where the first thing we did was explain to the court what
we had done. Had the court believed that what we did was fraudulent, it could have
determined that we did not have standing, and struck our claim. Instead the court
vindicated our claim and criticized Mr. Stotter quite harshly.
Q. Are you here today under any sort of compulsion?
A. No, I am here today testifying voluntarily.
Q. Are you receiving any compensation for your testimony today?
A. No. Although I did make it a condition of my testifying that I be reimbursed for
reasonable expenses that I have incurred in testifying, including the cost of my travel,
lodging and meals, my legal expenses, and security for my family in my absence.
Q. Why did you insist upon security for your family?
A. Having been on the other side and seeing how the tobacco companies handled business, I
wanted to be certain they were protected.
Q. I'm handing you U.S. Exhibit 89,421. Have you seen this document before?
A. Yes.
Q. Who is the letter to?
A. My counsel, Peter Gordon.
Q. Who is the letter from?
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A. David Wallace of Chadbourne & Parke.
Q. What is the date of the letter?
A. November 17, 2004
Q. Could you read the substance of the letter?
A. Yes.
Dear Mr. Gordon:
We act for British American Tobacco Investments Limited (BATCo), one of the defendants in this RICO case that has been at trial since September of this year in federal court in Washington, D.C.
In preparation for Mr. Gulson's deposition currently scheduled for December 7 and his subsequent trial testimony and pursuant to the Australian Privacy Act 1988 (generally governing the collection and dissemination of personal and sensitive information), this is to advise you that we've instructed private investigators to collect personal and other background information on Mr. Gulson. The purpose of this investigation is to enable BATCo to establish its defenses to this action through, among other things, cross-examination of Mr. Gulson.
In respect of our obligations and Mr. Gulson's rights under the Australia Privacy Act 1988, we note that our investigation will be carried out by Control Risks' Group PTY Limited. We note further that:
1. All recipients of information gathered by Control Risks will only hold, use, and disclose such information in accordance with the National Privacy Principles set out in the Privacy Act 1988.
2. Control Risks has been instructed to search public records, such as births, deaths, and marriages records and land and property information. It has also been instructed to contact

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people capable of providing relevant information about Mr. Gulson, including current and former employers, work mates, business associates, friends, acquaintances, neighbors, and family.
3. Control Risks' investigators have been instructed to: (a) disclose their name and who they represent at the outset of any contact with any person; (b) to act in an ethical and professional manner at all times and use only fair and lawful means of collecting information. They have also been instructed not to: (a) use any deception to obtain information about Mr. Gulson; (b) make any threats or inducements; (c) conduct any surveillance; or (d) collect information in any unreasonably intrusive manner.
Control Risks may be reached at [DELETED], and by telephone at [DELETED]. As required by the privacy act, Mr. Gulson is, of course, at liberty to request copies of all information gathered by Control Risks Group Party Limited in connection with this investigation.
Very truly yours,
David L. Wallace.
Q. Do know whether or not under the Australia Privacy Act of 1988 there is any requirement to disclose to a party being investigated that they are being investigated?
A. My understanding is that there is no requirement.
Q. What do you believe was the purpose of this letter?
A. I believe that this letter was designed to intimidate me.
Q. I am handing you U.S. Exhibit 28,658. Is this another letter from David Wallace?
A. Yes.
Q. What is the date of the letter?

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A. 21 October 1997.
Q. Have you seen this letter before?
A. No.
Q. What is the substance of the letter?
A. It appears to be a letter from Mr. Wallace seeking to hire a private investigator.
Q. Please turn to the second page of the document. Mr. Wallace writes:
What we want in the first instance is an intelligent person with solid investigative training and skills as well as an open and creative mind to help us to create something essentially out of whole cloth.
What does that sentence express to you?
A. That Mr. Wallace was looking for a private investigator who was willing to make up things about the subject of an investigation.
Q. Were you familiar with this type of behavior when you were with Wills?
A. Not those actions specifically, but it was actions of that kind that made me, and my wife, particularly, wary about testifying in this case.
Q. Have you been granted immunity by the United States before offering testimony in this case?
A. Yes.
Q. Why are you testifying in this case?
A. I think it's the right thing to do in the circumstances. I was upset to see the maladministration of justice in the McCabe case in Australia. The Judge there got it right and it was still reversed. The Cowell decision, it shook a fairly fundamental belief in me as to the rule of law in our country. I was offended as an Australian at what I regarded as the improper and unethical actions of a number of lawyers purportedly coming from senior, leading firms. In McCabe, the judge got it right. The judge exercised the correct

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discretion and was then reversed. Then to top it off, Wilson and company seek a retraction
in the Financial Review. For me that was the last straw and I called Peter Gordon, which
set this all in motion. So I get nothing out of it but the satisfaction of seeing perhaps a
little bit of justice being done somewhere in some jurisdiction.
Q. Thank you for your time, Mr. Gulson.

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